

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

APPLE INC.

Plaintiff,

FINAL PRETRIAL CONFERENCE
ORDER

11-cv-178-bbc

v.

MOTOROLA MOBILITY, INC.

Defendant.

A final pretrial conference was held in this case on November 1, 2012 before United States District Judge Barbara B. Crabb. Plaintiff Apple Inc. appeared by Matt Powers, Jaron Raofield and Christine Saunders Haskett. Defendant appeared by Stephen Swedlow, Brian Cannon, Edward DeFranco, Chester Day and Lynn Stathas.

Counsel predicted that the case would take 8-9 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that with the exception of experts and corporate representatives, all witnesses would be sequestered. Counsel are either familiar with the court's visual

presentation system or will make arrangements with the clerk for instruction on the system.

No later than 5:00 p.m. on November 2, 2012, plaintiff's counsel will advise defendant's counsel of the witnesses plaintiff will be calling on Monday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendant's counsel shall have the same responsibility in advance of its case.

Counsel may have no more than 45 minutes for opening statements and should confine their statements to an explanation of what they expect the evidence will show. Arguments are to be reserved for the end of the trial.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection.

NOTE: It is not necessary for counsel to provide copies of documentary evidence to the court until the end of trial. The exhibits that the parties introduce will be displayed on the exhibit monitor.

Counsel should know that matters that have been kept under seal during the pendency of this case, including exhibits, will be disclosed to the public to the extent they are the subject of testimony. The exhibits themselves will not be part of this court's record; counsel are responsible for their own exhibits.

NOTE: From this date forward, any documents filed with the court under seal must be accompanied by a document that has been redacted to remove only the truly confidential information. I will not review every document to be sure that this directive has been followed but will reserve the right to impose sanctions if any party uses redaction improperly, to hide information that it cannot persuade the court is covered by the protective order.

The parties agreed to present their primary deposition testimony in pared down form. Each deposition introduced will begin with a short running of the deposition so that the court can get a sense of the deponent and with a two-to three minute explanation by counsel about what the deposition will cover; the party's opponent may then have an opportunity to respond to the explanation and ask the court to read sections of the deposition it believes flesh out the portions identified by the other counsel. The court will read the portions of the depositions identified by the parties so that it will not be necessary to use in-court time to listen to them.

The parties are to advise the court when they intend to introduce evidence that is confidential so that the courtroom may be cleared. They anticipate that this will happen only rarely. In some cases, counsel will introduce evidence solely on the visual presenter without discussion but without the need to close the courtroom.

Counsel agreed to accommodate each other's scheduling problems by using Friday, November 9, 2012 for witnesses unable to appear during the following week. If there is a

witness who has started testifying and could finish his testimony and avoid staying in Madison for the three-day weekend, every effort will be made to get that testimony in as well.

Motorola's motion to strike the reports of David E. Culler and Steven W. McLaughlin is DENIED, but the reports may be used only as factual evidence about the prior litigation of the '516 patent and possibly as materials for cross examination. If Apple seeks to use the reports for the latter purpose, it must first clear the use with the court.

The parties are directed to revise their proposed special verdicts with a focus on the factual matters that the court must decide in order to answer each proposed question in the verdict. Proposing a general question is not helpful. What is helpful is to break the question down into questions about specific facts. For example, instead of asking "Was the driver negligent?" the questions can be framed in specifics, tracking the trial evidence: "Was the driver exceeding the speed limit at the time of the accident?" "Did the driver fail to signal his turn?" etc. In revising the verdicts, counsel should start with the goal of including every question they believe the court must answer in order to decide this case.

In addition, Apple is to revise its proposed special verdict by tying each question to a specific claim in the first amended complaint and explaining which remedy sought matches which claim and why.

In addition, the parties are to prune and supplement their proposed findings of fact

to exclude proposed facts that are no longer relevant and to identify every fact they intend to prove that bears on each question they want the court to answer. The revised special verdict forms and proposed findings of fact are to be filed with the court no later than noon on Wednesday, November 7, 2012.

Without reaching any resolution, the court and the parties discussed at length questions about the justiciability of the issues raised by Apple and the implications of the court's picking a specific FRAND rate, particularly in view of Apple's statement that it does not consider itself bound to accept any rate determined by the court.

Entered this 2d day of November, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge